

Comment Set 1

June 25, 2004

Valerie Van Way
Division of Environmental Planning and Management
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

Re: Shore Terminals LLC
Draft EIR for Renewal of Lease of Marine Oil Terminal
Location: 2801 Waterfront Road, Martinez, CA
CSLR EIR No. 706
State Clearinghouse No. 2001042022

Dear Ms. Van Way:

Shore Terminals LLC ("Shore") is in receipt of the Draft Environmental Impact Report ("Draft EIR") prepared by Chambers Group, Inc. and relating to the renewal of Shore's existing California State Lands Commission ("CSLC") lease of 5.04 acres necessary to the continued operation of the marine oil terminal in Martinez, California (the "Martinez Terminal"). Shore thanks the CSLC and its staff for their hard work and attention to detail in developing the Draft EIR. We look forward to working closely with CSLC staff to finalize the EIR and to execute a new 20- year lease.

Shore acknowledges that there are significant impacts associated with the continued operation of a marine oil terminal located on the Carquinez Strait. The purpose of this letter is to set forth Shore's comments with respect to the Draft EIR and to seek resolution of Shore's questions and concerns regarding the Mitigation Measures proposed by CSLC and Chambers Group. Shore will express its general concerns first followed by specific comments addressed to recommended Mitigation Measures. Going forward, Shore hopes to work collaboratively with the CSLC to discuss and implement mitigation measures that are reasonable, feasible and effective.

General Concerns

Lease Term: The draft EIR contemplates a 20-year lease term beginning in 1998 (corresponding to the expiration of the previous lease) and ending in 2018. The proposed 20-year lease renewal places Shore at a competitive disadvantage because several other marine oil terminals are concurrently being processed by the CSLC for 30-year lease renewals. Due to significant delays in the EIR process beyond Shore's control, Shore has been on holdover status for six years and has incurred significant expense to support what has become a protracted EIR process. Shore will incur significant additional cost to implement the studies and infrastructure improvements proposed as mitigation measures.

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Therefore, Shore respectfully submits that the Shore lease should be for a 20-year term commencing upon CSLC approval and execution of the new lease, which we anticipate will be in 2005. This will permit Shore a more reasonable period of time to recoup its investment in the upgraded marine oil terminal facilities.

Industry Regulation by Lease Renewal: The petroleum industry, and particularly marine oil terminals, are among the most highly regulated businesses in California. In operating the Martinez Terminal, Shore is subject to many federal and state laws and regulations. The Martinez Terminal falls under the jurisdiction of several federal and state agencies, including the U.S. Coast Guard, U.S. Environmental Protection Agency, U.S. Department of Fish & Wildlife, U.S. Office of Pipeline Safety, U.S. Army Corps of Engineers, California Department of Fish & Game, California Office of Oil Spill Prevention and Response (OSPR), California State Fire Marshall, California Regional Water Quality Control Board, California Environmental Protection Agency, Bay Conservation and Development Commission and Bay Area Air Quality Management District, as well as CSLC. The Martinez Terminal is subject to a comprehensive Oil Spill Response Plan that is administered by the U.S. Coast Guard, U.S. Environmental Protection Agency and OSPR. These federal and state laws and regulations are uniformly applicable to all marine oil terminals operating in California and have resulted in a standardization of industry practices. Cogent regulatory schemes presently exist which provide clear and objective standards for terminal operations. In reviewing the mitigation measures proposed by CSLC in the Draft EIR, Shore is concerned that implementation of these recommended mitigations may usurp the authority of other regulatory agencies and may result in inconsistent or conflicting directives to terminal operators, as well as increased bureaucracy. There is a danger that marine oil terminal operators will be subject to different standards depending upon whether or not the terminal has completed the CSLC lease renewal process. Because all EIR's are different, the very real prospect exists that there will be different mitigation measures identified for similarly situated marine oil terminals, resulting in regulatory inconsistency. Because of the significant impact of oil spills to the environment, all proposed CSLC regulations should be submitted concurrently to all marine oil terminal operators with the opportunity for all operators to comment. Shore believes that the CSLC lease renewal process involving individual terminal EIRs is not the appropriate way to regulate the marine oil terminal industry unless the process is standardized and coordinated with other regulatory agencies having jurisdiction.

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Implementation of Marine Oil Terminal Engineering & Maintenance Standards ("MOTEMS"): Many of the Mitigation Measures recommended by the CSLC require that Shore adopt the "proposed" MOTEMS regulations. However, the MOTEMS are still in the process of being formulated and modified as they work their way through the regulatory enactment process. In proposing in the Draft EIR that Shore adopt MOTEMS that have not been finalized, there is uncertainty and potential increased cost to Shore to implement regulations that may be subsequently modified or eliminated. Shore is willing to comply with the MOTEMS at such time as they are finalized and enacted. Should the MOTEMS not be enacted, Shore would be willing to comply with (1) industry

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standards relating to the engineering and maintenance of marine oil terminal wharfs, and (2) mitigation measures that are reasonable, feasible and consistent with the objectives of the proposed MOTEMS.

Feasibility of Terminal Enforcement of Vessel Operations: Several of the Mitigation Measures proposed by the CSLC require that Shore, as the terminal operator, take affirmative action to enforce regulations under the purview of the U.S. Coast Guard, the International Maritime Organization ("IMO"), and the California Regional Water Quality Control Board. Under circumstances in which the CSLC lacks enforcement power (e.g. vessel bottom paint applications and vessel ballast water management), the CSLC is unreasonably seeking to create enforcement power by requesting that Shore, as a condition of lease renewal, monitor vessel compliance and take enforcement action as the terminal operator (e.g. ban vessels from mooring at the Martinez Terminal). It is not feasible for Shore to regulate vessel operations and/or to take enforcement action against vessels. Moreover, requiring terminal operators to take enforcement action raises the specter of conflicting application of regulations by terminal operators and federal and state agencies. Shore is willing to send notices to vessels and collect data regarding vessel compliance, but is unwilling to engage in regulatory enforcement.

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Potential for Conflicting Standards re: Oil Spill Response: Several of the Mitigation Measures proposed by the CSLC infringe upon the jurisdiction of the U.S. Coast Guard and OSPR to effectuate a comprehensive and consistent scheme for oil spill response by all marine oil terminal operators. The Draft EIR specifies spill responses and response times that are unique and which arguably conflict with existing oil spill response protocol, e.g. the Geographic Response Plan and the Area Contingency Plan. There are mature and well-drilled spill response procedures in place in the Bay Area managed by the U.S. Coast Guard, U.S. Environmental Protection Agency and OSPR. Any variation to these procedures should only be effectuated in consultation with these leading agencies and after the marine oil terminal industry has had a collective opportunity to comment.

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No Project Alternative: In several instances, the Draft EIR discusses the "no project alternative" (i.e. lease termination and wharf removal) and concludes that petroleum products can be transported through the Bay Area from the Martinez Terminal via the PG&E fuel oil pipeline, a pipeline that has not been operational for more than twenty years. This is not a meaningful project alternative and needs to be eliminated from the final EIR. The PG&E fuel oil pipeline is not operational. The PG&E fuel oil pipeline is not presently permitted and has several gaps in contiguity, most notably in the City of Martinez. Shore's understanding is that the PG&E pipeline is currently in private ownership with no assurance that it could be adapted, rehabilitated, permitted or made operational for usage by the Martinez Terminal.

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The no project alternative, i.e. not renewing Shore's wharf lease, would most likely result in the termination of all Martinez Terminal operations. Shore's primary Martinez business is to provide logistic support to local petroleum refiners. Marine logistics are an

essential aspect of this business, and the Terminal could not economically continue to operate without a marine facility. Considering the market price volatility of petroleum products in California, Shore can envision no public benefit that would result from the closure of the Martinez Terminal.

SPECIFIC COMMENTS

The following are Shore's specific comments with respect to impacts identified in the Draft EIR and Recommended Mitigation Measures proposed by the CSLC.

Mitigation Measure OS-3b: In implementing Mitigation Measure GEO-IOc, Shore will conduct a Passing Vessel Study to be completed no later than 2005. If the Study recommends the installation of a tension monitoring system, Shore will implement the recommendation.

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Mitigation Measure OS-3c: Because the wharf is parallel to the current in the Carquinez Strait, Shore believes that installation of an Allision Avoidance System ("AAS") would be of minimal use or benefit at the Martinez Terminal. Shore understands that many vessel pilots downplay the importance of the AAS at wharves immediately adjacent to a navigable channel such as the Martinez Terminal. Shore requests that CSLC solicit the opinion of the Bar Pilots in this regard to allow an adequate cost to benefit determination to be made.

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Mitigation Measure OS-6c: For the reasons stated in Shore's General Comments, it is not reasonable to require that Shore comply with the "proposed MOTEMS" for the fire detection/suppression system. It is Shore's understanding that the fire detection system only applies to new terminals under the proposed MOTEMS. Shore intends to install and maintain any fire suppression systems mandated under the final and duly enacted MOTEMS regulations, in accordance with the MOTEMS installation schedule. In the event that the proposed MOTEMS are not enacted, Shore will install and maintain fire suppression systems consistent with industry standards and consistent with the objectives of the proposed MOTEMS.

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Mitigation Measure OS-8a: Shore believes that the adequacy of the Vessel Traffic System ("VTS") and any system improvements fall under the jurisdiction of the U.S. Coast Guard. Shore will defer to a request from the U.S. Coast Guard and/or the Harbor Safety Committee to participate in a VTS study group and will agree to participate financially upon terms to be agreed upon with other study participants.

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Mitigation Measure OS-8b: Shore agrees with the concept of providing an initial spill response without assuming liability; however, this is not an appropriate "lease condition." Rather, Shore will provide an initial spill response consistent with Shore's Oil Spill Response Plan on file with OSPR and CSLC subject to those spill response directives which may be issued by the U.S. Coast Guard and OSPR.

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Mitigation Measure WQ-2: For the reasons stated in Shore's General Comments, and because Shore has no enforcement power under the California Maritime Species

Control Act, it is unreasonable and infeasible to require that Shore determine which vessels have complied with the Act and ban those vessels from mooring that have not complied with the Act. Moreover, because the Act has a sunset provision effective January 1, 2010, it is not reasonable or feasible to make compliance with the Act a continuing requirement under a 20-year lease. Finally, vessel owners have an independent legal obligation under the Act to provide ballast water data directly to both the U.S. Coast Guard and the CSLC. Shore would be willing to ask for modified customer contract provisions requiring compliance with the Act at the time of contract renewal, but Shore can give no assurances that such provisions can be negotiated or agreed upon.

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Mitigation Measure WQ-3: A Storm Water Pollution Prevention Plan (SWPPP) currently exists for the Martinez Terminal. Shore is willing to supplement the existing SWPPP to address Best Management Practices (BMPs) for the wharf pursuant to directives and timelines established by the Regional Water Quality Control Board, with informational copies to be provided to CSLC.

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Mitigation Measure WQ-5: For the reasons stated in Shore's General Comments, and because Shore has no enforcement power under the International Maritime Organization ("IMO") mandate prohibiting new applications of TBT or other metal based anti-fouling paints, it is unreasonable and infeasible to require that Shore determine which vessels have complied with the IMO mandate and ban those vessels from mooring that have not complied with the IMO. Notwithstanding the foregoing, Shore is willing to cooperate with CSLC and provide written notification to vessel operators and agents regarding the IMO requirements. Shore would also be willing to ask for modified customer contract provisions requiring compliance with the IMO mandate at the time of contract renewal, but Shore can give no assurances that such provisions can be negotiated or agreed upon.

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Mitigation Measure BIO-3: Dredging in the Bay Area is effectively coordinated and managed by the Dredged Material Management Office (DMMO) process. The DMMO process includes consultation with many interested agencies including the U.S. Army Corps of Engineers, National Marine Fisheries Service, California Department of Fish & Game, the Bay Conservation & Development Commission, the State Water Resources Control Board and, of course, the CSLC. Shore will continue to defer to the DMMO on issues relating to the specifics and timing of dredging, including the protection of fish habitat. The separate imposition of additional requirements by the CSLC would be unintentionally too limiting and/or conflicting with DMMO directives.

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Mitigation Measure BIO-6b, 6c & 6e: For the reasons stated in Shore's General Comments, the mitigation measures proposed by the CSLC in BIO-6b, 6c & 6e infringe upon the jurisdiction of the U.S. Coast Guard and OSPR to effectuate a comprehensive and consistent scheme for oil spill response by all marine oil terminal operators. The newly proposed and unique spill response time of 3 hours to boom sensitive sites conflicts with existing oil spill response protocol as set forth in the Geographic

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Response Plan and the Area Contingency Plan. Shore will continue to defer to the U.S. Coast Guard and OSPR with regard to sensitive site strategies. Shore will deploy booms to sensitive sites within 3 hours of an oil spill when so directed by a lead regulatory agency or when so indicated in the Geographic Response Plan annex to the Area Contingency Plan. With regard to sonic hazing of birds, the technology is changing and it is not reasonable or feasible to purchase sonic hazing equipment. OSPR has in place a sonic hazing permit system compliant with the Endangered Species Act and, in the event of an oil spill, Shore will comply with OSPR directives regarding the necessity, timing and manner of sonic hazing. Shore agrees that immediately following a spill, loss of resources must be documented. Natural Resource Damage Assessment ("NRDA ") procedures are included in the U.S. Coast Guard/EP A managed Area Contingency Plan. Developing sampling methods prior to an oil spill does not expedite cleanup because each spill is unique as to quantity, commodity, impacted areas and remediation strategies. Shore will work closely with NRDA agencies to ensure that damage assessments occur as soon as possible after the occurrence of an oil spill. In conclusion, there are mature and well-drilled spill response procedures in place in the Bay Area managed by the U.S. Coast Guard, EP A and OSPR. Any variation to these procedures should only be effectuated in consultation with these leading agencies and after the marine oil terminal industry has had a collective opportunity to comment.

Mitigation Measure FSH-4: The VTS system operated by the U.S. Coast Guard is available to provide navigational information to shrimp trawlers transiting and operating in the Carquinez Strait. It is not reasonable or feasible to require Shore to identify and contact the operators of shrimp trawlers. In order to decrease the possibility of miscommunication and confusion among vessels, there needs to be one point of contact regarding vessel traffic, i.e. the Coast Guard VTS system. In the highly unlikely event that the VTS system should be discontinued, Shore will participate in an industry study group to identify and implement a new vessel warning system. Finally, there cannot and will not be increases in vessel transits associated with the Martinez Terminal in the absence of an application to the City of Martinez for a Conditional Use Permit, at which time the public and all interested agencies would be provided an opportunity to comment regarding vessel traffic and communications. For the reasons discussed above, Shore does not intend to prepare an annual report on this subject.

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Mitigation Measure FSH-5: The VTS system operated by the Coast Guard is available to provide navigational and vessel traffic information to the herring fishery. It is not reasonable or feasible to require Shore to identify and contact the operators of herring vessels. In order to decrease the possibility of miscommunication and confusion among vessels, there needs to be one point of contact regarding vessel traffic, i.e. the Coast Guard VTS system. In the highly unlikely event that the VTS system should be discontinued, Shore will participate in an industry study group to identify and implement a new vessel warning system. Shore is willing to attend the next annual public scoping session of the Pacific herring commercial fishery to determine whether Shore can add value. For the reasons discussed above, Shore does not intend to prepare an annual report on this subject.

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<u>Mitigation Measure FSH-8d:</u> Shore agrees with the spirit but not the wording of this mitigation measure. In the event that Shore is determined to be the responsible party for an oil spill, Shore will voluntarily participate in post-spill evaluations of mitigation measures. In consultation with CSLC and OSPR, the terms and conditions of Shore's financial participation will be determined after the spill.	1-19
<u>Mitigation Measure LU-3:</u> In the event that Shore is determined to be the responsible party for an oil spill, Shore will agree to mitigate land use and recreation impacts in accordance with Shore's Oil Spill Response Plan.	1-20
<u>Mitigation Measure GEO-2b:</u> For the reasons stated in Shore's General Comments, it is not reasonable to require that Shore comply with "proposed MOTEMS." Shore will conduct a seismic evaluation as required by the final and duly enacted MOTEMS. In the event that the proposed MOTEMS are not enacted, Shore will perform a seismic evaluation no later than 2008 consistent with industry standards and consistent with the objectives of the proposed MOTEMS.	1-21
<u>Mitigation Measure GEO-3:</u> For the reasons stated in Shore's General comments, it is not reasonable to require that Shore comply with "proposed MOTEMS." Shore will perform a site specific liquefaction evaluation as required by the final and duly enacted MOTEMS. In the event that the proposed MOTEMS are not enacted, Shore will perform a liquefaction study no later than 2008 consistent with industry standards and consistent with the objectives of the proposed MOTEMS.	1-22
<u>Mitigation Measure GEO-4b:</u> For the reasons stated in Shore's General comments, it is not reasonable to require that Shore comply with "proposed MOTEMS." Shore will perform a mooring analysis as required by the final and duly enacted MOTEMS. In the event that the proposed MOTEMS are not enacted, Shore will perform a mooring analysis no later than 2008 consistent with industry standards and consistent with the objectives of the proposed MOTEMS.	1-23
<u>Mitigation Measure GEO-10a:</u> Shore is willing to collect 12 months of data on currents and wind speeds at the wharf. However, tide level measurements in the San Francisco Bay are well documented and the installation of tide measuring equipment at the Martinez Terminal wharf would not be reasonable or beneficial.	1-24

Technical Corrections

Page	Correction	
ES-1	Lines 18-20. The acreage of the Martinez Terminal is 138 vice 217. Of the 138, approximately 70 are in use for the storage terminal, and approximately 68 remain vacant.	1-25

ES-5

Line 8. Shore does not have connections to the inactive PG&E fuel line. The feasibility of physical connections and permits is unknown. In addition, the PG&E pipeline is not intact and its structural integrity is very uncertain.

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ES-14

Line 13. Liquid wastes from vessels are not discharged to trucks. The wharf is not designed to support or accommodate trucks for this purpose. MARPOL waste discharge requirements are met using a black oil pipeline. The "adverse impact" classification should be changed to reflect these facts.

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ES15

Line 17. Vessels do not take on lubricating oils from trucks at the wharf. The wharf is not designed to support or accommodate trucks for this purpose. The "adverse impact" classification should be changed to reflect this fact.

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Pg 2-3

Section 2.2.1 should reflect the correct acreage as noted in item ES-1 above.

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Thank you for your favorable consideration of Shore's comments in preparing the final EIR. We are available to meet with CSLC staff to review our comments and to discuss the reasonable implementation of mitigation measures. In the meantime, if you have any questions, or if I can be of assistance, please do not hesitate to contact me.

Sincerely,

SHORE TERMINALS LLC

Richard W. Brandes
Director, Environmental Services West

cc: H. Vincent McLaughlin, Esq.
Ron Rushton, Kaneb Terminals
Mike Peterson, Kaneb Terminals
Leroy Anderson, Kaneb Terminals

Responses to Comment Set 1

- 1-1 As indicated in the comment, the Shore facility has been in “holdover status”, i.e., subject to the conditions of its previous lease, for the last six (6) years. When combined with the proposed lease, if approved, Shore will have operated for 26 years from the date of its previous lease at the end of the proposed lease.
- 1-2 Neither the CEQA process, nor the CSLC’s leasing process, is regulatory in nature. The CEQA requires that mitigation measures be imposed on those aspects of a project that may result in potentially significant environmental impacts. Mitigation measures must be both specific to, and proportional with, the particular impact that requires mitigation. In the case of the proposed Project, the Draft EIR determined that the imposition of various mitigation measures is appropriate and necessary to reduce potentially significant impacts to the greatest extent feasible.

The CEQA process affords several opportunities for the involvement of other regulatory agencies in the preparation and consideration of environmental documentation on a proposed project. This involvement includes the scoping process, in which the nature and extent of environmental issues are developed, and review and comment on the draft documentation. The CSLC has not received any comments from responsible or trustee agencies to date that indicate the potential for either conflict or overlap with their established authorities or programs.

In its role as “landlord” of various of the State’s public trust resources, the CSLC may impose such appropriate lease conditions as it deems necessary to protect these resources from potential impacts resulting from use of State lands. In carrying out this responsibility, the CSLC endeavors, within the constraints of staggered lease terms for existing facilities, to treat all similar uses (such as marine terminals) involving similar local conditions and potential impacts, in a consistent manner.

- 1-3 The provisions of MOTEMS were approved by the State Building Standards Commission on January 19, 2005, and filed with the Secretary of State on January 31, 2005. It is anticipated that the MOTEMS regulations will be published on or about April 1, 2005, and become effective for application to all marine terminals, including Shore, on or about October 1, 2005.
- 1-4 The latter portion of Mitigation Measure WQ-5 is modified as follows: Shore will advise agents representing vessels that have called at the Shore Marine Terminal as of the date of adoption of the cited Mitigation Monitoring Program, and agents representing vessels that would be likely to call at the Shore Marine Terminal in the future about the requirements of the 2008 IMO prohibition of TBT applications to vessel hulls. Following the effective date of the IMO prohibition, Shore will ensure that the Master or authorized representative of vessels intending to call at the Shore Marine Terminal certify that their vessel is in compliance and provide a

copy of such certification to the CSLC's Marine Facilities Division, either electronically or by facsimile, prior to the vessel's entry into San Francisco Bay or in the alternative, at least 24 hours prior to the vessel's arrival at the Shore Marine Terminal.

1-5 Please see response to Comment 1-2 above. Staff of the CSLC does not believe that any of the mitigation measures in the Draft EIR are in conflict with existing regulations and has not received any comments from relevant responsible or trustee agencies to that effect..

1-6 Section 15126.6 (e) of the State CEQA Guidelines requires that an EIR address the "No project" alternative and describes in what manner such alternative must be discussed. As defined on Page 2-25 and summarized on Page ES-4 of the Draft EIR, the No Project Alternative does not reference the PG&E fuel oil pipeline. Instead, the DEIR discusses this pipeline as part of the "Modification to Existing Pipelines for Continued Operation of Upland Facility Alternative" on Pages 2-27 and ES-5. The disposition of the Martinez Terminal would be determined by Shore should this alternative be considered by the Commission.

1-7 Mitigation Measure OS-3b: Comment noted.

1-8 Mitigation Measure OS-3c:

The Allision Avoidance System (AAS) is useful for minimizing vessel impact during berthing, and for monitoring vessel surge/sway while moored. It has proven very beneficial at an adjacent facility in San Francisco Bay. A vessel could significantly damage a terminal structure or fender system, and potentially risk an oil spill, from a high velocity impact. If the structure or fender system cannot carry such loads, the AAS would ensure that the maximum allowable impact velocity of the berthing system is not exceeded. In carrying out the implementation of this Mitigation Measure, the CSLC will permit Shore to provide information that demonstrates the sufficiency of its existing terminal berthing system prior to making a determination on whether installation of an AAS is necessary. Mitigation Measure OS-3c is modified to add the following wording: "...Prior to implementing this measure, Shore shall consult with the San Francisco Bay Bar Pilots, the U.S. Coast Guard, and the staff of the CSLC and provide information that would allow the CSLC to determine, on the basis of such consultations and information regarding the nature, extent and adequacy of the existing berthing system, the most appropriate application and timing of an AAS at the Shore Terminal."

1-9 Mitigation Measure OS-6c: Please see response to Comment 1-3 above.

1-10 Mitigation Measure OS-8a:

The staff of the CSLC, based on Shore's commitments, believe that the last sentence in the mitigation measure should be clarified by the following modification, "Shore shall designate a representative(s) to participate in this

analysis toward the upgrade or expansion of the VTS per terms, including financial, to be agreed upon with other study participants”.

1-11 Mitigation Measure OS-8b:

All Mitigation Measures identified in a project specific EIR and adopted by the CSLC are incorporated into any CSLC lease by reference to ensure that they are implemented to the satisfaction of the CSLC.

1-12 Mitigation Measure WQ-2:

The staff of the CSLC believes an equivalent level of environmental protection may be achieved through the modification of Mitigation Measure WQ-2 as follows, i.e., replace the fourth through eighth sentences in the Mitigation Measure with: “Shore will advise agents representing vessels that have called at the Shore Marine Terminal as of the date of adoption of the cited Mitigation Monitoring Program, and agents representing vessels that would be likely to call at the Shore Marine Terminal in the future about the California Marine Invasive Species Control Act. Shore will ensure that a Questionnaire containing the following questions is provided to the Vessel Operator, and inform the Vessel Operator that the Questionnaire should be completed on behalf of the vessel, by its Master or authorized representative, and provided to the CSLC’s Marine Facilities Division, either electronically or by facsimile, prior to the vessel’s entry into San Francisco Bay or in the alternative, at least 24 hours prior to the vessel’s arrival at the Shore Marine Terminal.

The Questionnaire shall solicit the following information:

1. Does the vessel intend to discharge ballast water in San Francisco Bay, the Carquinez Strait or any other location(s) in a Delta waterway on its transit to the Shore Marine Terminal?
2. Does the vessel intend to discharge ballast water at the Shore Marine Terminal?
3. Which of the following means specified in the California Marine Invasive Species Act (CMISA) has the vessel operator used or intend to use on the current voyage to manage the vessel’s ballast water: a mid-ocean exchange (as defined in Section 71200(g)); retain all ballast on board; or discharge the ballast water at the same location (as defined in Section 71204.2(c)(2)) where ballast originated, provided ballast water was not mixed with ballast water taken on in an area other than mid-ocean waters?

1-13 Mitigation Measure WQ-3: Comment noted.

1-14 Mitigation Measure WQ-5: Please see response to Comment 1-4 above.

1-15 .Mitigation Measures BIO-3a and BIO-3b: We address each of the cited measures below.

- BIO-3a – Under the parameters of the DMMO observed operating windows regarding Dungeness Crab, dredging is not allowed in the months of May-June only. The proposed mitigation would add the month of September to this prohibition based on information that juvenile Dungeness Crab are most abundant in the project area during this month. Although the DMMO window would allow dredging during September, the proposed restriction would still allow Shore to conduct required dredging and yet provide additional protection to a commercially harvested species.
- BIO-3b – The window proposed in this measure coincides with that used by the DMMO, i.e., June-November, and thus would not restrict Shore's required dredging, but would suggest that it occur in a time period, i.e., July-August, that would be more protective of the winter and spring run Chinook salmon smolt because their activity is lowest during this period.

Accordingly, staff believe that the above measures are not in direct conflict with the windows observed by the DMMO, would allow the dredging required at the Shore facility, and are most protective of the marine resources that could be adversely affected by such dredging.

1-16 Mitigation Measures BIO-6b, BIO-6c and BIO-6e: Please see response to Comment 1-2 above. In addition, each of the referenced mitigation measures is discussed below.

- BIO-6b – This measure suggests a performance standard that would provide maximum protection of identified sensitive resources that should be met by Shore in the conduct of their Oil Spill Response Plan. To date, we have not received any comment from either the U.S. Coast Guard or OSPR that indicates that the stated standard conflicts with either the Geographic Response or Area Contingency Plans. The matter could be addressed in conjunction with each agency during the implementation of the Mitigation Monitoring Program should that become necessary.
- BIO-6c – The measure merely requires Shore to “identify a source” of sonic hazing devices, not purchase such devices, and again proposes a performance standard in the use of such devices. Again, the CSLC has not been notified by OSPR that such standard is problematic, but matter could be addressed in conjunction with that agency during the implementation of the Mitigation Monitoring Program should that become necessary.
- BIO-6e – The measure restates standard practices that have been employed in previous Natural Damage Resource Assessments (NRDA) and indicates that standard protocols for resource sampling methods and design established as a consequence of such experiences should be identified in

anticipation of a spill in the area rather than during or after such spill. Such methods relate to the conduct of a NRDA subsequent to a spill rather than to the nature or speed of required cleanup efforts.

1-17 Mitigation Measure FSH-4:

The intent of the mitigation measure is to avoid space use conflicts between vessels with varied navigational abilities that are engaged in the conduct of very different activities within the same water body, i.e., the Carquinez Strait. The measure does not specify the manner in which Shore must notify the shrimp trawlers. For example, the intent of the measure would be met if the VTS provides the information necessary for the shrimp trawlers to be aware of impending transits in the Strait to and from the Shore facility so that they could be better able to avoid being affected by such transits. While it is in everyone's best interest to prevent such space use conflicts under any circumstances, the measure is triggered specifically by "increases in vessel transits."

1-18 Mitigation Measure FSH-5:

The intent of the mitigation measure is to avoid space use conflicts between vessels with varied navigational abilities that are engaged in the conduct of very different activities within areas of San Francisco Bay. The measure does not specify the manner in which Shore must notify the herring fishermen. For example, the intent of the measure would be met if the VTS provides the information necessary for the herring fishermen to be aware of impending transits to and from the Shore facility so that they could be better able to avoid being affected by such transits. We believe the commitment of Shore to participate in annual Pacific herring commercial fishery public scoping and hearing process will result in benefits to all parties.

1-19 Mitigation Measure FSH-8d:

Comment noted. The intent of the measure is to provide relief to "subsistence" fishermen who could not fish in an area impacted by an oil spill and consequently could not provide the same level of food to themselves or their families. Such relief is different than that demanded of a responsible party through the NRDA process.

1-20 Mitigation Measure LU-3: Comment noted. Please refer also to responses to Comments 1-4 and 1-7 through 1-19 above.

1-21 Mitigation Measure GEO-2b: Please see response to Comment 1-3 above.

1-22 Mitigation Measure GEO-3: Please see response to Comment 1-3 above.

1-23 Mitigation Measure GEO-4b: Please see response to Comment 1-3 above.

1-24 Mitigation GEO-10a: Please see response to Comment 1-3 above.

Technical Corrections to the Draft EIR:

1-25 ES-1 Lines 18-20: The text of the ES is modified as noted in Section 4.

1-26 ES-5 Line 8: The text in the ES and at page 2-27 of the DEIR is modified as noted in Section 4.

1-27 ES-14 Line 13: The text in the ES and at page 3.2-35 is modified as noted in Section 4.

1-28 ES-15 Line 17: The text in the ES and at page 3.2-37 is modified as noted in Section 4.

1-29 Page 2-3, Section 2.2.1: The text of Section 2.2.1 is modified as noted in Section 4.